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7 UNITED STATES OF AMERICA,
8 Plaintiff,
9 v.
10 LARRY ROBERSON,
11 Defendant.

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14 Case No. 12-cr-00550-PJH-1

15 **ORDER DENYING MOTION TO STAY**
16 Re: Dkt. No. 53

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18 The government has filed a motion to stay the motion of defendant Larry Roberson
19 to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 under the
20 holding of *Johnson v. United States*, 135 S. Ct. 2551 (2015). The government seeks a
21 stay of the § 2255 motion on the ground that the Supreme Court granted certiorari in
22 *Beckles v. United States*, No. 15-8544, which presents issues raised in defendant's
23 § 2255 motion in light of the holding of *Johnson*, where the Court held unconstitutionally
24 vague the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C.
25 § 924(e)(2)(B)(ii) (defining "violent felony" to include an offense that "otherwise involves
26 conduct that presents a serious potential risk of physical injury to another"). The ACCA
27 residual clause invalidated in *Johnson* is identical to the residual clause of the definition
28 of "crime of violence" in the career offender guidelines, U.S.S.G. § 4B1.2(a)(2). The
Supreme Court granted certiorari review in *Beckles* on the questions whether *Johnson*
applies retroactively to collateral cases challenging federal sentences enhanced under
the residual clause in U.S.S.G. § 4B1.2(a)(2), and whether *Johnson*'s constitutional

1 holding applies to the residual clause in U.S.S.G. § 4B1.2(a)(2), thereby rendering
2 challenges to sentences enhanced under it cognizable on collateral review.

3 The government represents that *Beckles* will likely decide the application of
4 *Johnson* to the Guidelines and the retroactivity question presented in defendant's § 2255
5 motion. Doc. no. 53. Defendant promptly filed an opposition to the motion to stay,
6 emphasizing that he would be prejudiced by a stay of his § 2255 motion because if he is
7 granted relief on his *Johnson* claim, he has overserved his potential post-*Johnson*
8 guideline sentence. Doc. no. 54. He has served 49 months of his 63-month sentence on
9 a felon-in-possession conviction. Without the sentencing enhancement, he contends that
10 his guideline range would have been 27-33 months.

11 In support of his opposition to the stay, defendant cites *Yong v. I.N.S.*, 208 F.3d
12 1116 (9th Cir. 2000), where the Ninth Circuit held that the district court abused its
13 discretion by staying a habeas petition pending resolution of an appeal in a case before
14 the Ninth Circuit presenting similar issues to be decided, *Ma v. Reno*, 208 F.3d 815 (9th
15 Cir. 2000), *vacated by Zadvydas v. Davis*, 533 U.S. 678 (2001). In reviewing the stay
16 order, the Ninth Circuit noted that "because the stay terminates upon the 'resolution of
17 the [Ma] appeal,' if the Supreme Court should grant certiorari to review this court's
18 decision in *Ma*, the stay could remain in effect for a lengthy period of time, perhaps for
19 years if our decision in *Ma* is reversed and the case is remanded for further proceedings."
20 *Id.* at 1119. The court in *Yong* reasoned that "habeas proceedings implicate special
21 considerations that place unique limits on a district court's authority to stay a case in the
22 interests of judicial economy," and held that "although considerations of judicial economy
23 are appropriate, they cannot justify the indefinite, and potentially lengthy, stay imposed
24 here." *Id.* at 1120-21.

25 The court carefully considers whether a stay pending resolution of *Beckles* is likely
26 to be resolved without inordinate delay because of the court's duty to adjudicate habeas
27 petitions in a timely manner. *Yong*, 208 F.3d at 1119-20. Because a decision in *Beckles*
28 is expected within a year, the government does not seek an indefinite stay. Unlike the

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1 appeal at issue in *Yong* which was subject to further review, the Supreme Court is likely
2 to decide conclusively the question presented in *Beckles* whether *Johnson* applies
3 retroactively to collateral challenges to sentence enhancements applied under the
4 residual clause of the guidelines. Staying these proceedings pending a decision by the
5 Supreme Court on this threshold question could, however, result in prejudicial delay to
6 defendant, who seeks a reduced term of imprisonment that may be exceeded by time
7 served. Furthermore, the court notes that the Ninth Circuit recently lifted the stays
8 previously entered in *Gardner v. United States*, No. 15-72559 and *Jacob v. United*
9 *States*, No. 15-73302 (9th Cir. Aug. 1, 2016), which the government cited in support of
10 the instant motion to stay. Doc. nos. 53, 55. Under these circumstances, considerations
11 of judicial economy are outweighed by the potential prejudice to defendant, and a stay is
12 not warranted.

13 Accordingly, the government's motion to stay the § 2255 motion is DENIED.

14 **IT IS SO ORDERED.**

15 Dated: August 10, 2016



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PHYLLIS J. HAMILTON
United States District Judge